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December 16, 2017

BY EMAIL AND ECF

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Kaleil Isaza Tuzman, et al.*, 15 Cr. 536(PGG)

Dear Judge Gardephe:

This letter is respectfully submitted to update the Court on two matters relevant to the hopefully prompt conclusion of the trial next week. First, we wanted to update the Court that, at the request of the Government I conferred with Sharif Amanat and he agreed to allow me to accept a trial subpoena on his behalf. I updated the Government this morning that Mr. Amanat is prepared to testify next week. The Government provided me with a subpoena for Tuesday. Our only request is that we take whatever steps are necessary to allow Mr. Amanat to testify on Tuesday, so that he is not forced to travel on multiple days.

Second, if the Government does not intend to file a written response to our Rule 29 motion, we submit that an oral response is appropriate to the main points. The motion does not depend on any credibility determinations, and a response from the Government of some kind is appropriate before the charge conference. Among other issues, we submit that the Government needs to make clear what evidence of interstate wires, it will rely upon for Counts One and Two. Additional jury instructions may be necessary. It would be improper, for example, for the jury to convict Mr. Amanat on the theory that any of the KIT digital wires relevant only to Counts Five and Six apply to Counts One and Two. Any ambiguity on this issue should be cleared up in the charge. The defendant is entitled at least to notice of the wires at issue going into summations, and modifications of the charge may be necessary. *See, e.g., United States v. D'Amelio*, 683 F.3d 412, (2d Cir. 2012) (finding no constructive amendment where "well in advance of trial, the government provided the defendant with notice of the communications on which it would rely to prove the charged crime at trial").

We appreciate the Court's consideration.

Respectfully submitted,

/s/ Randall W. Jackson
Randall W. Jackson

cc: All parties